

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.269 of 2013

Date of Decision: May 25, 2015

Binder Singh

...Petitioner

Versus

Presiding Officer, Industrial Tribunal, Bathinda & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Puneet Kumar Bansal, Advocate,
for the petitioner.

Mr.Rohit Kapoor, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

The workman has sought modification of the award dated 10.2.2012 (Annexure P-1) claiming full back wages instead of 30% back wages as ordered by the Labour Court.

Mr.Puneet Kumar Bansal, learned counsel appearing for the petitioner submits that the petitioner has categorically stated that he was unemployed and even in the affidavit filed in support of the evidence, same averment has been made, but the Management did not put any specific question qua the aforementioned fact and, therefore, the averment made in the examination-in-chief is deemed to have been admitted. The Labour

Court, therefore, had not assigned any reason in awarding 30% back wages instead of full back wages. In support of his contention, he has relied upon the judgment rendered in **Deepali Gundu Surwase Versus Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, (2013) 10 SCC 324.**

Mr.Rohit Kapoor, Advocate, learned counsel appearing for respondent No.2 submits that the award of the Labour Court is legal, fair and justified and there is no illegality and perversity in the same. The workman had already been reinstated and the award of back wages to the extent of 30% is fair.

I have heard the learned counsel for the parties and appraised the paper book.

As per the principles culled out by the Hon'ble Supreme Court in Deepali Gundu Surwase's case, it is not only the employee but even the employer had to specifically aver in the written statement that the workman was not gainfully employed. In the instant case, the workman has categorically pleaded in the claim petition and as well as in the affidavit, submitted in the examination-in-chief, that he was not employed. No question, much less, any suggestion has been put in the cross-examination. Even the employer in his affidavit has not made a single averment that the workman was gainfully employed during the period he remained out of service. In order to lend support to the aforementioned finding, I deem it appropriate to extract principle (iii) culled out in Deepali Gundu Surwase's case:-

“(iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is

required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.”

In the absence of averment made in the affidavit submitted by the employer, the award of the Labour Court awarding 30% back wages is not justified and the same is accordingly modified. The employee is held entitled to full back wages.

With the aforementioned observations, the award of the Labour Court is modified and the writ petition stands disposed of.

May 25, 2015
ramesh

(AMIT RAWAL)
JUDGE